IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.638 OF 2003
IN
SUMMARY SUIT NO.448 OF 2000

M/s.Elder Instruments Pvt.Ltd. Plaintiff

versus

Shree Satpuda Tapi Parisar
Sahakari Sakhar Karkhana Ltd. Defendant

Mr.Anand Kumar i/by Andn kumar & Daulat Jehangir for plaintiff.

Mr.Bhushan Mahadik with Mr.Kishor Shriyar for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th July 2005

PC :

1. The plaintiff has filed present summary suit for recovery of a sum of Rs.2,76,432/-. It is the case of the plaintiff that the goods sold, supplied and delivered to the defendant have been received and no complaint has been made about its quality, quantity and price. Invoices were raised for a sum of Rs.11,39,334.90 Ps.. According to the plaintiff, the defendant made payment of the invoices leaving a sum of Rs.2,76,432/- as balance thereunder. It is this

amount which is claimed along with interest in the present suit. The suit is filed as a summary suit on the basis of written contract, as evidenced by the purchase order, delivery challans and invoices.

2. Mr.Mahadik appearing for defendant raised three contentions. His first contention is that the present suit is not filed after giving the mandatory statutory notice u/s 101 of the Multi State Co-operative Societies Act. He submits that this provision is on par with Section 164 of the Maharashtra Co-operative Societies Act, 1960. The suit cannot be instituted without prior notice. Such a notice cannot be waived either. His second submission is that this Court has no jurisdiction to entertain and try present suit. No part of the cause of action has arisen at Mumbai and in fact the defendant carried on business at Shahada, order was placed by them from Shahada. That order is confirmed by M/s.Vista Pvt. Ltd. - a company from Pune which has endorsed the purchase order in favour of present plaintiff. The present plaintiff could not have, therefore, filed present suit in this Court. His third contention is that the defendant has made payment to the tune of

Rs.32,67,829/- against three invoices issued by the plaintiff. However, equipments under the invoices in question were defective and correspondence in that behalf is annexed as Exhibits-C and D to the affidavit in reply. It is pointed out that each of these letters have been received by the plaintiff and in fact they had agreed to look into the complaints made by the defendant about defective machinery. That apart, the defendant filed a suit in the Court of Civil Judge, Senior Division, Shahada being Civil Suit No.4 of 2001 for recovery of Rs.32,67,839/-. That suit has been decreed on 31st December 2002.

3. After hearing Mr.Kumar and Mr.Mahadik, in my view, not only on the issue of compliance of Section 101 of the Multi State Co-operative Societies Act but also in the light of the correspondence annexed to the affidavit in reply and the decree of the Civil Court, at Shahada, triable issues arise. It is not possible to hold that the defendants have not made payment of Rs.32,67,839/- against three invoices of Rs.34,69,296/- means they have admitted their liability to pay at least a sum of Rs.1,94,057/- if not the decretal claim. There is no question of breaking up the claims in this manner and of

submission of Mr.Kumar is to be accepted, that would also give rise to further triable issues. For all these reasons, unconditional leave to defend is granted to the defendant. Suit is transferred to the list of commercial causes with usual directions as to filing of written statement, discovery and inspection.

(S.C.DHARMADHIKARI, J.)